The Dale Farm case shows that legal authority must be made clear before potentially life-wrecking actions are taken.

Conor Gearty *investigates the background of the recent Dale Farm legal action, and finds that, even though the Human Rights Act has not being invoked in this instance, the residents of Dale Farm have been able to use legal loopholes to undermine the Council's desire to evict them.*

The attempt to remove travellers from Dale Farm in Essex has been the subject of a series of complicated legal actions, some of which are ongoing. Here is a snapshot of the current state of play.

In the 1990s Dale Farm was owned by a Mr Roy Bocking. Even then it wasn't a farm – more a scrap-yard made up of a hard surface used for storing cars. The property is within the Green Belt and as early as 1992 it was the subject of no fewer than 42 planning enforcement notices related to the unlawful activity that was taking place on it. Hard surfaces and various fences were required to be removed. When the travellers who are at the centre of today's dispute purchased the place in 2001 they inherited a large amount of hard-standings and these are very likely to have dated from this time; it would seem that (contrary to what the Council was later to tell itself) these early enforcement notices had not been complied with.

New enforcement notices ensued between 2002 and 2004, requiring removal of hardcore or hard standings and subsequent re-seeding of the land, the cessation of residential use on the plots, and the removal of caravans and vehicles and other mobile and portable structures. Apart from one plot however there was no requirement in any of the notices to demolish or remove buildings. And unlike the 1992 enforcement notices, none of the current notices required the removal of unlawfully erected fences.

Credit: Save Dale Farm (Creative Commons)

The issue that has preoccupied the courts this week has been how far the Basildon Council is entitled to go in executing these new enforcement notices. Everyone initially agreed that they are valid (see *R (McCarthy) v Basildon District Council* [2009] EWCA Civ 13) and that stuff can be done – the question is how much. As Mr Justice Edwards-Stuart put it in his judgment this Monday ([2011] EWHC 2416 (QB)):

> *the residents contend that a wholesale removal of the hard standings (apart from the excepted plots), removal of fixed caravans and demolition of certain buildings and other fixed structures, such as walls, fences and gates, goes beyond the scope of the steps described in the notices' whereas the Council submits that 'these objections are misconceived and that, save for [some very few exceptions], it is entitled to carry out what is, in effect, a wholesale clearance of nearly all of the plots on the site.*

At an earlier hearing the week before this latest judgment, the judge asked for the Council to be much more particular about what it was planning to do. Basildon duly put together a more detailed analysis and presented it to Court on Friday the 23rd. The judge heard evidence from both sides on Friday and gave written judgment on Monday.

And what has the judge now decided? Yes you have guessed – that another hearing is necessary! This time it is mainly to work out which buildings, if any, can be demolished and which are to be protected, with everything hinging on *when* they were constructed. It seems that buildings, walls, fences and gates which predate the second set of enforcement notices, but which are nowhere mentioned in them, will be now safe

from destruction – so long as their age can be established, with the onus being on the residents to show that they were there when the notices (which fatally didn't mention them) were issued and have not been opportunistically (and illegally) added since. As the judge put it in a neatly understated way the enforcement notices 'may not have been sufficiently precisely drawn'. He is surely right about that: you can't issue an enforcement notice to remove a ground surface and then nip in and destroy a house to get at it – the second action is not just an enabler of the first, and so in fairness requires its own enforcement notice.

As though all this were not complicated enough, the day before the hearing on the 23rd the residents started a whole new parallel legal action saying the implementation of the enforcement power was itself unlawful, a much wider attack than they had hitherto contemplated and one that is to be decided today.

So there you have it – two proceedings ongoing, each enmeshing the Council's desire to get rid of these travellers in ever increasing amount of red tape and legalistic confusion. No mention of the Human Rights Act, or of international human rights law, or of the rights of travellers. But out of sight is not out of mind, so far as this judge is concerned, I'd say. Behind the pedantry is a truly ethical position, even if it is unspoken: before you wreck people's lives make sure you have made your legal authority crystal clear. The judgment reminds me of those cases in Apartheid South Africa where brave human rights lawyers and the occasional sympathetic judge cleverly used every loophole they could to reduce or undermine the actions of the state agents with whose immoral conduct they were confronted. A worrying analogy to make of a British court decision.

And what next?

I'll return to this when we have the ruling on the validity of the enforcement notice and then (if that goes well for the Council) the final ruling on what exactly they will be able to do at Dale Farm.

This article first appeared on Conor Gearty Comment on 29 September.